Supreme Court of the United States

October Term, 1969

No. 661

HELLENIC LINES LIMITED and UNIVERSAL CARGO CARRIERS, INC.,

Petitioners,

against

ZACHARIAS RHODITIS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF THE ROYAL GREEK GOVERNMENT AS AMICUS CURIAE

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The Royal Greek Government having obtained and filed the written consents of counsel for Petitioners and counsel for Respondent, respectfully submits this brief as amicus curiae.

Jurisdiction

The final judgment of the United States Court of Appeals for the Fifth Circuit was entered on July 3, 1969, on which date the Court denied Petitioner's petition for rehearing and petition for rehearing en banc. The petition for certiorari was filed September 27, 1969, and was granted January 12, 1970. (The jurisdiction of this Court is confirmed by Title 28 United States Code, Section 1254.)

Statement of the Facts

Respondent, a first class seaman, was employed in Greece upon the Greek steamship Hellenic Hero on a voyage to United States ports and return. He was injured while the ship was docking in the port of New Orleans; however, no negligence except that of the owner and the operators of the vessel is claimed in this proceeding. Hellenic Lines Limited, a Greek corporation, was the operator of the Hellenic Hero at all pertinent times and was the employer of petitioner. Title to the Hellenic Hero was, however, in Universal Cargo Carriers, Inc., a Panamanian subsidiary of Hellenic Lines Limited. The Hellenic Hero flew the Greek flag and her home port was Piraeus, Greece. After he was injured and after he had received medical care in New Orleans, respondent was repatriated to Greece where he returned to work after being fully cured. Subsequently, respondent proceeded to bring this civil action to recover under the Jones Act and *in rem* and *in personam* to recover benefits under the General Maritime Law.

Hellenic Lines has already paid medical expenses and a portion of other benefits to respondent Rhoditis under Greek law.

Interest of the Greek Government

The interest of the Greek Government, as stated in its brief amicus on the petition for writ of certiorari in this case, is very obvious. The m/s Hellenic Hero was a vessel flying the Greek flag, registered in Greece in accordance with the Greek law and operated by Hellenic Lines Ltd., one of the petitioners, a Greek corporation, all of whose officers and directors are Greek citizens. The injured seaman respondent was both a citizen of Greece and a resident of Greece. Respondent signed his articles and contract of employment in Greece which contract called for appli-

cation of the Greek Collective Bargaining Agreement and Greek law.

Of particular concern to the Greek Government is the decision of the United States Court of Appeals for the Fifth Circuit stating that "the Hero's flag is more symbolic than real" and that "the Hero's flag is merely one of convenience".

These findings which led to the Court of Appeals' conclusion that the Jones Act (46 U.S. Code § 688 et seq.) and the General Maritime Law of the United States should be applied, are in direct contradiction with the decision of the United States Court of Appeals for the Second Circuit in a virtually identical case, *Tsakonites* v. *Transpacific Carriers Corp.*, 368 F.2d 426 (2 C.A. 1967), cert. den. 386 U.S. 1007.

Thus the Court of Appeals for the Fifth Circuit ignored the interest of the Royal Greek Government as the authority granting Greek registration to the m/s Hellenic Hero; as the authority authorizing m/s Hellenic Hero to fly the Greek flag; as the authority granting incorporation under the Greek law to Hellenic Lines Limited as far back as 1934; as the Government of the nation of which respondent was both a citizen and a domiciliary; as the Government which approved the terms of the Collective Bargaining Agreement in force; as the Government of the laws referred to by the terms of the hiring articles and the Greek Collective Bargaining Agreement and finally as the Government having jurisdiction over respondent's claim agains petitioner on the basis of liability without fault under Greek law. Furthermore, the Fifth Circuit decision is in direct conflict with *J. Lauritzen* v. *Larsen*, 345 U.S. 571 (1953) where at page 584 it was stated:

> "Each state under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it.

> Nationality is evidence to the world by the ship's papers and its flag. The United States has firmly and successfully maintained that the regularity and validity of a registration can be questioned only by the registering state".

ARGUMENT

This Court in *J. Lauritzen* v. *Larsen, supra,* set forth the factors to be considered in determining whether the law of the flag was applicable in cases of injury to merchant seamen occurring in United States waters.

The decision of the United States Court of Appeals for the Fifth Circuit has not followed these guidelines in arriving at its conclusion that the Jones Act should be applied.

Rather, the decision of the United States Court of Appeals for the Fifth Circuit overemphasizes the fact that the injury had occurred aboard the vessel while in United States waters. Circuit Judge Goldberg states that "The American character of this tort is further emphasized" by that fact. However, no Americans were involved. The accident occurred on the Greek ship. Judge Goldberg states that this "weakens our bondage to the flag" and that "when combined with the totality of American contacts, the fact that the accident occurred in our territorial waters points to Jones Act applicability".

Nonetheless, this Court had earlier in *J. Lauritzen* v. *Larsen, supra,* eliminated the particular location of the vessel as having any influence on the choice of applicable law. In the *Larsen* case the injury occurred aboard ship while in the port of Havana. At 345 U.S. 583 it was stated:

> "The test of location of the wrongful act or omission, however sufficient for torts ashore, is of limited application to shipboard torts, because of the varieties of legal authority over waters she may navigate".

Later, at page 584 of 345 U.S. this Court added:

> "But the territorial standard is so unfitted to an enterprise conducted under many territorial rules and under none that it usually is modified by the more constant law of the flag".

Later this Court emphasized the minimal weight to be ascribed to this factor in *Romero* v. *International Terminal Operating Co., et al.*, 358 U.S. 354 (1959). Romero was a Spanish citizen, was signed on in Spain on a vessel with a Spanish flag owned by a Spanish corporation. In the *Romero* case the injury occurred aboard the vessel while already docked in the port of New York. In the *Rhoditis* case herein the accident occurred prior to the vessel being secured alongside. Mr. Justice Frankfurter commented upon the weight to be ascribed to the situs of the tort at 358 U.S. 384:

> "To impose on ships the duty of shifting from one standard of compensation to another as the vessel passes the boundaries of territorial waters would be not only an onerous but also an unduly speculative burden, disruptive of international commerce and without basis in the expressed policies of this country".

Thus this Court has clearly held twice that the law of the place where the vessel happens to be at the time of shipboard injury should not be given weight. The decision of the United States Court of Appeals for the Fifth Circuit as to which petitioners seek a review has ascribed considerable weight to this factor. In fact, a reading of the opinion indicates the decision might have gone the other way had not the injury occurred while the vessel was in the port of New Orleans. The inequity of such an approach to this choice of law question is obvious. The decisions of this Court tell us clearly the choice of law to be applied to a shipboard injury should not depend on the location of the vessel.

Again, we must point out the Fifth Circuit has differed from the decisions of this Court in eliminating the significance of the third factor considered by Mr. Justice Jackson in *Lauritzen* v. *Larsen*. Here the Fifth Circuit stated "We find the domicile of the injured seaman to be unimportant". However, herein Zacharias Rhoditis was a Greek citizen; he lived in Greece; he signed his hiring agreement in Greece; the agreement called for the application of Greek law; the agreement called for the application of a Greek Collective Bargaining Agreement; and the agreement called for service aboard a Greek vessel. All this shows that Rhoditis was no stranger to the service in which he was engaged. There was no presumption that he was ignorant of any of the factors of his employment; in fact, the presumption is the other way. He knew the terms of his employment; he knew the Greek law; he was entitled to the benefits of the Greek law, and in fact the Greek law does provide for benefits without the necessity for his proving fault on the part of the petitioner.

Compared with this let us view the decision of the United States Court of Appeals for the Second Circuit and its emphasis on the injured seaman's citizenship and domicile in *Tsakonites* v. *Transpacific Carriers Corp.*, 368 F.2d 426 (2 C.A. 1967), cert. den. 386 U.S. 1007. In this case the United States Court of Appeals for the Second Circuit reached the opposite result to the Fifth Circuit herein. Circuit Judge Moore writing for the majority, stated:

> "Plaintiff is an alien, who is not even an American resident. His employment contract by its terms limits his rights to those arising under Greek law—a factor to which weight must be given because it represents plaintiff's jurisdictional choice. Nor can, in this case, the Greek flag of the Hellenic Spirit be said to be a 'flag of convenience', within the meaning of cases like Bartholomew v. Universe Tankships, Inc., 263 F.2d 437, 440 (2d Cir.), cert. denied, 359 U.S. 1000 (1959), and Southern Cross SS Co. v. Firipis, 285 F.2d 651 (4th Cir. 1960), cert. denied, 365 U.S. 869 (1961)."

In fact, since our brief amicus on the petition was submitted we have received a copy of the Greek Court decision granting Tsakonites recovery for his injury and explaining the applicable Greek statute of limitation as 20 years. A translation of the minutes and settlement approval by the Court is annexed hereto and marked Exhibit "A". Thus the Greek citizenship and domicile of Rhoditis should certainly be an important factor emphasizing the non-American character of the tort. Combined with the other non-American contacts this certainly indicated the Jones Act should not be applied especially since this Court stated in *Lauritzen* v. *Larsen, supra* (345 U.S. 587):

> "His [the Danish seaman] presence in New York was transitory and created no such national interest in, or duty toward, him as to justify intervention of the law of one state on the shipboard of another".

Again, the Fifth Circuit decision repudiates the logic of Mr. Justice Jackson as to the nationality of the plaintiff and the form of articles signed (345 U.S. 588-9):

> "Except as forbidden by some public policy, the tendency of the law is to apply in contract matters the law which the parties intended to apply. We are aware of no public policy that would prevent the parties to this contract, which contemplates performance in a multitude of territorial jurisdictions and on the high seas, from so settling upon the law of the flag-state as their governing code. This arrangement is so natural and compatible with the policy of the law that even in the absence of an express provision it would probably have been implied."

Still another difference from the decision of this Court in *Lauritzen* v. *Larsen, supra,* is that the Fifth Circuit has failed to ascribe to the flag of the vessel its proper weight. In no way does the Fifth Circuit opinion appreciate that according to this Court the law of the flag is the prime factor. It is of cardinal importance that the weight given

to the ensign overbears most other connecting events in determining applicable law (345 U.S. 585). The law of the flag should be applied "unless some heavy counterweight appears" (345 U.S. 586).

The assumption that the Greek flag and the Greek registration of the Hellenic Hero were lightly given is not borne out. Hellenic Lines Ltd. was organized as a Greek corporation in 1934. All of its stockholders and directors and officers are citizens of Greece. The vessels call regularly at Greek ports. Only Greek seamen are employed on the various vessels including Hellenic Hero. Under the Greek Collective Bargaining Agreement, Greek law is to be applied to hiring contracts. The Fifth Circuit negated the cardinal importance to be given to the flag by pointing to the domicile of the majority stockholder who, though concededly a Greek citizen, is a domiciliary of the United States. Apparently this fact alone prompted the Fifth Circuit to hold that the Greek flag was "more symbolic than real" and "merely one of convenience". However, the facts would indicate that any flag other than the Greek flag would be one of convenience and mere symbolism; the Greek flag is the only true flag and the only proper flag to fill the operation of a vessel owned by a Greek corporation, hiring in Greece pursuant to Greek law and the Greek Collective Bargaining Agreement.

This Court has never held that the validity of the flag or registration of the vessel should be vitiated through engagement of the vessel in foreign and international commerce with regular calls at United States ports. The values were specifically refuted in *Lauritzen* v. *Larsen* at 345 U.S. 581:

> "Respondent places great stress upon the assertion that petitioner's commerce and contacts with the ports of the United States are frequent and regular, as the basis for applying our statutes to incidents aboard his ships. But the virtue and utility of seaborne commerce lies in its frequent and important

contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea. Hence, courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality. It has the force of law, not from extraterritorial reach of national laws, nor from abdication of its sovereign powers by any nation, but from acceptance by common consent of civilized communities of rules designed to foster amicable and workable commercial relations."

Any other particular holding would be to jeopardize the flags of all vessels engaged in regular foreign commerce. For instance, should we question the flags of United States vessels which sail from New York regularly for South American ports. Even the s/s United States, formerly our blue ribbon passenger ship in North Atlantic operation, sailed between the ports of New York, Southhampton, LeHavre and Bremerhaven. Obviously it made more calls at foreign ports than United States ports, yet nobody questioned the applicability of United States law.

Thus, the decision of the Fifth Circuit holding the Jones Act and the General Maritime Law of the United States to apply to an injury sustained aboard a Greek flag vessel by a Greek citizen is not in accord with the directives of this Court as set forth in *J. Lauritzen* v. *Larsen, supra* and *Romero* v. *International Terminal Operating Co., et al., supra.*

CONCLUSION

The decision of the United States Court of Appeals for the Fifth Circuit should be reversed.

Respectfully submitted,

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New York, New York 10004

DAVID P. H. WATSON
of Counsel

Exhibit A

No. 10396

MAGISTRATES COURT OF THE PEACE
PIRAEUS
GREECE

Decision No. 631

PROCEEDINGS OF THE MAGISTRATES COURT OF THE PEACE

COMPROMISORY AGREEMENT UNDER ACT 551

In Piraeus this third day of the month of April in the year one thousand nine hundred and sixty-eight (April 3, 1968), Wednesday, 11.30 a.m., and at the Magistrates court of the peace before me ALEXANDROS PILINOS, Magistrate for the Peace, in the presence of the Clerk of the Court Spyridon Koumbousis, there appeared: 1) ELIAS TSAKONITIS son of NICOLAOS, seaman, registered in the marine registers of the Mercantile Shipping under reg. serial No. 13763 holder of identity pass No. 15452 of 1968, of Piraeus, Odos Kountouriotou Street 149, accompanied by his counsel Elias Saghias, attorney-at-law of Piraeus, holder of identity pass No. 293/68 issued by the Lawyers Association of Piraeus, and 2) CONSTANTINOS IOANNIS ANDREOPOULOS, barrister-at-law, resident of Piraeus, holder of license No. 32/1968 issued by the Lawyers Association of Piraeus, acting in the name and on the behalf of the Transpacific Carriers Corporation of Panama, duly represented in Greece shipowners of the merchant S/S Vessel HELLENIC SPIRIT.

Both the above named made each the following statement:

Exhibit A

"I ELIAS TSAKONITIS hereby depose and state that under an Agreement dated June 4, 1959 for sea service signed at Piraeus, I signed for service on the above mentioned vessel in pursuance with the terms and conditions prescribed in the Collective Agreements Procedure in force in Greece and those which were included in the Agreement of Service. In fact, in compliance with the said Agreement of Service I left Piraeus and on June 5, 1959 I was registered for serve at Iraklion, Crete on June 5, 1959. I continued to discharge my duties as member of the crew until September 26, 1959 while the vessel was anchored at the Port of New York for off-loading. Going down the stairs leading to hold No. 3 I slipped and fell over on the wooden floors of the hold hitting myself against the floor injuring my left hip. I was at once carried-off in an ambulance to the Lutheran Medical Center of New York, dismissed from service as member of the crew on account of an accident and remained under treatment on the expense of the shipowners. After the operation and the medical observation I did not regain fitness and capacity to continue work but I became permanently partially unfit for work to an extent of 60%, and therefore I am entitled by law to an indemnity in accordance with the provisions prescribed under Act No. 551/1920 applying to labour accidents and casualties.

I further depose and state that during the time I served on board the said Vessel I was in receipt of monthly salary including overtime pay and other extra allowances amounting to £49.16.0 plus food rations in commodities estimated at £11.5.0. In other words I was paid £61.1.0 per month corresponding to the salaries and emoluments drawn by members of the crew who were in the same scale of pay during the 12 months preceding the accident. On

that basis, I, am therefore entitled to receive an indemnity amounting to Drachmae 77,547 (seventy seven thousand five hundred and forty-seven) the shipowning company is responsible to pay to me in their capacity of owners and directors of the vessel I was serving during the accident."

The Attorney of the Shipowners, on the other hand, deposed and states as follows:—

"I, acting as the lawful attorney of the Shipowning Company hereby deny, dispute the veracity and oppose every point brought forward in the arguments and assertions of ELIAS TSAKONITIS on the grounds that the accident was chiefly due to his own fault and therefore the victim is entirely held responsible for his injury as a result of very serious negligence and unforgivable action that led to the accident, and moreover to his breach of the labour regulations and procedure applicable to carriers because he resorted to the Southern District Court of New York applying for indemnity. His application was finally turned down by the Court whereupon my Assignors reserve all rights under the law in connection with the considerable expenses they incurred in the form of cost of law and incidentals for the hearing entirely on the personal responsibility of the Plaintiff ELIAS TSAKONITIS. Furthermore, the partial incapacitation of the plaintiff resulting from the accident amounts only to 20% and not 60%. In any case however, the amount of the incapacity for work as seaman did not make the plaintiff permanently unfit for work. Moreover in pursuance with the provisions prescribed in article 17 of Act 551/1920 the claim submitted by the plaintiff for indemnity as a result of an accident to him which occurred on September 26, 1959 is no longer valid and is written-off."

Exhibit A

Claimant ELIAS TSAKONITIS opposed and raised objections to every point suggested by the Attorney of the Shipowning Company, more particularly as regards the point of negligence on the part of the Claimant or the nature of his incapacity asserting to be of permanent character but partial to the degree of 60% acknowledged as such by the competent Medical Board of the Marine Veterans Social Insurance Fund, which, on these grounds, granted to him a pension allowance. Finally, the Claimant took objection to the invalidation and writing-off of his claim because according to the decision of the Supreme Court of Justice AREIOS PAGOS under decree No. 066 of 1966 published in the Legal Tribune page 1006 of 1966 claim for the writing-off of a lawful claim under the provisions prescribed in Act 551/1920, may be written-off after the lapse of 20 years similar to the period set down in connection with ordinary claims applicable to accidents to workers at sea. On the other hand the attorney of the Shipowners declared that all the points he submitted to Court are grounded on the point of the law and cannot stand any objection or opposition, or could they be influenced or weakened from the assertions of ELIAS TSAKONITIS, however, to save time and to avoid further judicial proceedings, disputes and contentions and all legal entanglements, costs of law and incidentals, is prepared to accept and hereby accepts to settle forthwith the entire indemnity demanded by the Claimant ELIAS TSAKONITIS, and, hereby offers to pay to the Claimant the sum of Drachmae 77,547 (seventy-seven thousand five hundred and forty-seven) in full settlement of his claim.

Now, inasmuch as both Parties jointly requested the Court to approve and to allow the compromisory agreement and settlement of the indemnity.

Whereupon the Magistrate of the Peace issued his reasoning and decision reading as follows:

Exhibit A

"WE, Magistrate of the Peace, having taken into consideration that Settlement of the Indemnity requested by the Parties concerned does not conflict with the provisions prescribed in article 14 of Act 551/1920 as now amended, have approved and allowed the compromisory agreement between the Parties concerned and its full settlement".

At this juncture CONSTANTINOS ANDREOPOULOS in his capacity of attorney of the Shipowners counted and paid in my presence to ELIAS TSAKONITIS the sum of Drachmae 77,547 (seventy-seven thousand seven hundred and forty-seven Drachmae), collected as cash money by the Claimant ELIAS TSAKONITIS in the presence of his Counsel ELIAS SAGHIAS Barrister-at-law, stating and acknowledging at the same time that his client ELIAS TSAKONITIS accepts the payment made and admits that he is entirely and completely satisfied and compensated, dismissing any other claim whatsoever of his Client from the TRANSPACIFIC CARRIERS CORPORATION owners and directors of the carrier HELLENIC SPIRIT of Panama, or from the Shipping Company "I ELLINIKI", the Shipping Agents and the Agents of the Carrier Vessel, the Master, officers, the crew of the vessel, the Insurance Agents and any other duly qualified representative or agent of the HELLENIC SPIRIT in connection with the accident he had while serving on board the said Carrier either under the provisions of Art. 551/2 of Act 3816/58 regarding procedure under the Private Mercantile Law or under any other provision of the Civil Law and Procedure and of any procedure old law provided in the Greek Law and Procedure or in any foreign Law and Procedure, particularly that of the United States of America in connection with any capital of money, interest thereon, costs, claim or demand raised by him for moral damages, compensation or other claim arising from the same cause and he, the Claimant, retains no other claim, demand or rights whatsoever on account of the same cause or reason either directly or

indirectly. To the above statement made by his attorney the Claimant ELIAS TSAKONITIS stated and deposed that none of the persons named here-above severally or jointly are to be held responsible or answerable regarding the accident which is entirely due to his own carelessness and negligence and not to any mechanic defect or to the absence of any necessary spare part of the vessel or of the machine installations or to any fault, failure, neglect, action or omission on the part of the Master, the Officers, the Boatswain, the members of the crew, or the shipowners and managers of the Shipping Company including their Seniors and Superintendents. Finally the Claimant abandons all and any right or rights whatsoever and claims against any person or persons whomsoever, or legal entities or corporations for repairs and indemnity as a result of moral injury.

On the other hand, CONSTANTINOS ANDREOPOULOS in his capacity of duly commissioned attorney acting on the behalf and in the name of the TRANSPACIFIC CARRIERS CORPORATION, hereby deposed and stated that he acknowledges and accepts all and every statement, declaration, admissions, dismissals and discharges made by ELIAS TSAKONITIS in our presence. Finally, ELIAS TSAKONITIS and his Counsel ELIAS SAGHIAS Barrister-at-law on the one hand and, CONSTANTINOS ANDREOPOULOS in his capacity of attorney of the Shipowners made a joint statement deposing that they acknowledged and accepted all and every point described hereabove, and jointly declared that they freely and without any reservation whatsoever abandon any right of opposing the terms of the agreement described herein both on the grounds of the law or on the merits of the case. More particularly, ELIAS SAGHIAS hereby states that he abandons all rights described in the Labour Agreement and concession.

In testimony whereof these present minutes of the proceedings were drafted and read clearly and distinctly to the hearing of all present, confirmed and duly signed by all present and by me Magistrate of the Peace.

Exhibit A

Costs of law and stamp duty Drachmae 931.20 were paid by the Shipowners as attested from receipt voucher No. 18331/68 signed by the Collector of Public Revenue.

Sgd: ELIAS TSAKONITIS, Deponent
E. SAGHIAS, Deponent
C. ANDREOPOULOS, Deponent

Sgd: A. PLINOS Magistrate
S. KOUMBOUSI Clerk

Sgd: ..... Clerk

Certified true and official transcript.

Official seal

Certified signature authentic.

Sgd: E. DIALYNAS, President
Court of the First Instance

Piraeus, April 11, 1968
Official seal
Certified signature authentic of the Pres.
Court of 1st Inst. Piraeus.

Sgd: N. KRIOS Section Chief
Ministry of Justice

Athens, April 11, 1968
Official seal

Certified true translation
April 16, 1968

S. P. CARNAPAS

Exhibit A

KINGDOM OF GREECE
PROVINCE OF ATTICA
CITY OF ATHENS } ss.
EMBASSY OF THE
UNITED STATES OF AMERICA

I, RICHARD J. HIGGINS, Vice Consul of the United States of America at Athens, Greece, duly commissioned and qualified, do hereby certify that, to the best of my knowledge and belief, the signature subscribed to the foregoing documents, *i.e.*,

> True copy of Decision, No. 631, of the Justice of the Peace at Piraeus, Greece, duly certified by the lawful custodian of such documents, in the matter of Elias N. Tsakonitis, seaman, and the Transpacific Carriers Corporation of Panama; with official translation thereof in English—

is the signature of G. Cardaras, Chief of the Bureau of Ministry of Foreign Affairs of Greece, and that by virtue of said office is empowered to certify, under the seal of the Ministry of Foreign Affairs of Greece, to the authenticity of the signatures and to the competency of officials of the Greek Government; and that the seal accompanying said signature is the seal of the Ministry of Foreign Affairs of Greece.

Embassy assumes no responsibility for the contents of the attached document.

Witness my hand and the seal of the Consular Section of the Embassy of the United States of America at Athens, Greece, this 17th day of April in the year 1968.

(SEAL)

RICHARD J. HIGGINS
Vice Consul of the United States
of America